



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

MAIL

Paper No. 15

SNELL & WILMER LLP
1920 MAIN STREET
SUITE 1200
IRVINE CA 92614-7230

MAY 13 2004
DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of
Hidekazu TANIGAWA, et al.
Application No. 09/283,938
Filed: April 1, 1999
For: DATA COMMUNICATION SYSTEM,
DATA TRANSMITTING APPARATUS, AND
DATA RECEIVING APPARATUS

DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

This is in response to the Petition for Withdrawal of Abandonment filed January 21, 2004, pursuant to 37 C.F.R. § 1.181(a). No fee is required.

On February 27, 2003, a non-final Office action was mailed in the subject application. A response from Applicants was not received. On January 15, 2004, a Notice of Abandonment was mailed.

Petitioner alleges that the Office action of February 27, 2003 was not received.

Based on M.P.E.P. § 711.03(c) [*See also Notice entitled Withdrawing the Holding of Abandonment When Office Actions Are Not received, 1156 O.G. 53 (November 16, 1993)*], in absence of any irregularity in the mailing of an Office Action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include:

- (a) a statement from the practitioner stating that the Office communication was not received by the practitioner;
- (b) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and,
- (c) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of the subject application reveals that there was no irregularity in the mailing of the Office action since it was mailed to the address of record at that time. It is noted that a Change of Address was filed on October 10, 2003. However, the non-final Office action from which the current application became abandoned for failure to respond, was mailed on February 27, 2003, over seven months prior to the Change of Address Notification. Petitioner states that "(t)he undersigned attorney merged his practice into SNELL & WILMER LLP, in November 2002. A U.S. Postal Forwarding Address order was on file with the U.S. Postal Service, since November 2002. Since then we filed a Change of Correspondence Address for this patent application."

MPEP § 601.03 states in part:

Where an attorney or agent of record (or applicant, if he or she is prosecuting the application pro se) changes his or her correspondence address, he or she is responsible for promptly notifying the U.S. Patent and Trademark Office of the new correspondence address (including ZIP Code).

Petitioner did not promptly notify the Office of the change of correspondence address. Therefore, the petitioner has not made a sufficient showing of non-receipt of the non-final Office action mailed February 27, 2003 in accordance with the requirements set forth in MPEP §711.03(c) and 601.03, reproduced above.

Therefore, for the above reasons, the petition is **DENIED**.

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision. Alternatively, petitioner may consider filing a petition to revive an unintentionally abandoned application under 37 CFR 1.137(b).

The file is being returned to the Files Repository.



Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications